

INCEST AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the Criminal Code regarding the offense of incest.

Highlighted Provisions:

This bill:

- ▶ amends the definition of the crime of incest; and
- ▶ increases the statute of limitations for prosecution from four to seven years.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

76-1-302, as last amended by Laws of Utah 2008, Chapter 129

76-7-102, as enacted by Laws of Utah 1973, Chapter 196

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-1-302** is amended to read:

76-1-302. Time limitations for prosecution of offenses -- Provisions if DNA evidence would identify the defendant -- Commencement of prosecution.

(1) Except as otherwise provided, a prosecution for:

(a) a felony or negligent homicide shall be commenced within four years after it is committed, except that prosecution for:

(i) forcible sexual abuse shall be commenced within eight years after the offense is committed, if within four years after its commission the offense is reported to a law enforcement agency; and

(ii) incest shall be commenced within seven years after the offense is committed;

(b) a misdemeanor other than negligent homicide shall be commenced within two years

after it is committed; and

(c) any infraction shall be commenced within one year after it is committed.

(2) (a) Notwithstanding Subsection (1), prosecution for the offenses listed in Subsections 76-3-203.5(1)(c)(i)(A) through (AA) may be commenced at any time if the identity of the person who committed the crime is unknown but DNA evidence is collected that would identify the person at a later date.

(b) Subsection (2)(a) does not apply if the statute of limitations on a crime has run as of May 5, 2003, and no charges have been filed.

(3) If the statute of limitations would have run but for the provisions of Subsection (2) and identification of a perpetrator is made through DNA, a prosecution shall be commenced within one year of the discovery of the identity of the perpetrator.

(4) A prosecution is commenced upon the finding and filing of an indictment by a grand jury or upon the filing of a complaint or information.

Section 2. Section **76-7-102** is amended to read:

76-7-102. Incest -- Definitions -- Penalty.

(1) ~~[A person]~~ (a) An actor is guilty of incest when, under circumstances not amounting to rape, rape of a child, or aggravated sexual assault, [he has sexual intercourse with a person whom he knows to be an ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin. The relationships referred to herein include blood relationships of the whole or half blood without regard to legitimacy, relationship of parent and child by adoption, and relationship of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.] the actor knowingly and intentionally:

(i) engages in conduct under Subsection (1)(b)(i), (ii), (iii), or (iv); or

(ii) provides a human egg or seminal fluid under Subsection (1)(b)(v).

(b) Conduct referred to under Subsection (1)(a) is:

(i) sexual intercourse between the actor and a person the actor knows has kinship to the actor as a related person;

(ii) the insertion or placement of the provider's seminal fluid into the vagina, cervix, or uterus of a related person by means other than sexual intercourse;

(iii) providing or making available his seminal fluid for the purpose of insertion or placement of the fluid into the vagina, cervix, or uterus of a related person by means other than

64 sexual intercourse;
65 (iv) a woman 18 years of age or older who:
66 (A) knowingly allows the insertion of the seminal fluid of a provider into her vagina,
67 cervix, or uterus by means other than sexual intercourse; and
68 (B) knows that the seminal fluid is that of a person with whom she has kinship as a
69 related person; or
70 (v) provides the actor's sperm or human egg that is used to conduct in vitro
71 fertilization, or any other means of fertilization, with the human egg or sperm of a person who
72 is a related person.
73 (2) As used in this section:
74 (a) "Provider" means a person who provides or makes available his seminal fluid or her
75 human egg.
76 (b) "Related person" means a person related to the provider or actor as an ancestor,
77 descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin, and includes:
78 (i) blood relationships of the whole or half blood without regard to legitimacy;
79 (ii) the relationship of parent and child by adoption; and
80 (iii) the relationship of stepparent and stepchild while the marriage creating the
81 relationship of a stepparent and stepchild exists.
82 [~~(2)~~] (3) Incest is a third degree felony [~~of the third degree~~].
83 (4) A provider under this section is not a donor under Section 78B-15-702.
84 **Section 3. Effective date.**
85 If approved by two-thirds of all the members elected to each house, this bill takes effect
86 upon approval by the governor, or the day following the constitutional time limit of Utah
87 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
88 the date of veto override.

Legislative Review Note
as of 6-24-08 2:50 PM

Office of Legislative Research and General Counsel